

# Vested Rights 101

City of San Antonio  
City Council "B" Session  
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# What are vested rights?

- A **vested right** is the right of a developer to:
  - **develop** a project
  - that complies **only** with ordinances and other development regulations
  - enforceable on the date the project was **started**

# What are vested rights?

- When a developer has vested rights:
  - City may **not** require development of a project
  - to comply with **new** development regulations
  - adopted **after** the project has started
  - unless a specific **exception** is authorized by state law.

# Same concept; different terms

- A project with vested rights is sometimes described as **grandfathered** from new regulations
- A project with vested rights has secured **entitlements** to develop under known regulations

# Sources of Vested Rights

- Common law, through judicial decisions
- “Grandfathering” exceptions adopted as a part of new development regulations
- State law

# History of Vested Rights in Texas

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- Common law tests: difficult to meet; courts have generally upheld the power of a city to enforce new regulations, even when doing so created a hardship on the developer
- Grandfathering provisions to avoid harsh or unfair results when enacting new development regulations

# History of Vested Rights Statute

- 1987: Legislature enacts H.B. 4 to establish the first statutory “vesting” rules for Texas cities and other regulatory agencies (Chapter 481, Texas Government Code)
- 1995: Legislature enacts H.B. 1704 to adopt significant amendments to Chapter 481
- 1997: Legislature inadvertently repeals Chapter 481



# History of Vested Rights Statute

- 1999: Legislature enacts H.B. 1704 to restore statutory vesting, codified as Chapter 245 of the Texas Local Government Code
- 2003: amendment to actions excluded from Chapter 245
- 2005: S.B. 848 effective April 27; S.B. 574 effective September 1

# San Antonio History and Experience

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- 1995 Water Quality Regulations (Ordinance No. 81491)
  - H.B. 4 protected on-going projects from newly-enacted impervious cover limits
  - Increase in plat applications before final adoption
  - Category classifications established a San Antonio “grandfathering” provision for “**property**” included in a permit application, not a “**project**”

# San Antonio History and Experience

- Ordinance 86715 passed September, 1997
- Filled regulatory gap created by repeal of Chapter 481 (1997 – 1999)
- Established “Permit Rights”
- Created an administrative review and certification of “Permit Rights” by a Development Review Permit (“DRP”) issued to an applicant

# Permit Rights

- “Permit Rights” means the right of a property owner or developer to complete a **project** under the rules, regulations and ordinances in effect at the time the **project** was initiated through a permit as herein defined. When Permit Rights exist for **property** within the boundaries of a **project**, ordinances passed after the date the **project** is initiated shall not apply to the **project** except as specifically provided within this section.

# Development Review Permit

- tied to approval of a Preliminary Overall Area Development Plan (“POADP”), plat application, plat, or building permit
- Expiration of Permit Rights if additional steps not completed (plat approval, recordation, or construction initiated under building permit)

# 2001 UDC

- 2001 Unified Development Code adopted May 3, 2001
- Sec. 35-712: Recognition of Vested Rights Derived From Texas Local Government Code Chapter 245
  - "Commentary: Any project which obtains a "development permit" pursuant to the provisions of Ordinance No. 86715, passed and approved September 25, 1997, shall continue to fall under the purview of said Ordinance the adoption of this chapter notwithstanding."

# 2001 UDC

- Sec. 35-712 established a vested rights recognition process for review and issuance of a certificate recognizing vested rights for a project
- Commonly called a “Vested Rights Permit” or VRP
- Sec. 35-712 is the current administrative authority by staff to review and respond to claims for vested rights under Chapter 245



# 2003 Tree Ordinance

- Ordinance No. 97332 adopted on May 13, 2003: amendments to Tree Preservation regulations first adopted to be effective in 1997
- Projects initiated before effective date of either the 1997 or the 2003 Tree Preservation regulations have been vested against those regulations
- Relationship to vested rights claims

# Current Litigation

- City currently defending against four lawsuits in which the primary claim asserted is City's failure to comply with Chapter 245 restrictions; raised as a collateral claim in at least one other pending lawsuit
- Discussion of claims, defenses, and issues best held in executive session to preserve attorney client confidentiality

# Local Government Code Chapter 245 Today

# Chapter 245 Highlights

## 245.001. Definitions:

(1) "Permit" means a license, certificate, approval, registration, consent, permit, contract of other agreement for the construction or provision of service from a utility owned, operated, or controlled by the regulatory agency, or other form of authorization required by law, rule, regulation, order, or ordinance that a person must obtain to perform an action or initiate, continue, or complete a project for which the permit is sought.

# Chapter 245 Highlights

## 245.001. Definitions:

(3) "Project" means an endeavor over which a regulatory agency exerts its jurisdiction and for which one or more permits are required to initiate, continue, or complete the endeavor.

# Chapter 245 Highlights

## 245.001. Definitions:

(4) "Regulatory agency" means the governing body of, or a bureau, department, division, board, commission, or other agency of, a political subdivision acting in its capacity of processing, approving, or issuing a permit.

# Chapter 245 Highlights

## 245.002. Uniformity of Requirements:

(a) Each regulatory agency shall consider the approval, disapproval, or conditional approval of an application for a permit solely on the basis of any orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirements in effect at the time: [application is filed in person or by mail]

# Chapter 245 Highlights

## 245.002. Uniformity of Requirements:

(b) If a series of permits is required for a project, the orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirements in effect at the time the original application for the first permit in that series is filed shall be the sole basis for consideration of all subsequent permits required for the completion of the project. (cont.)



# Chapter 245 Highlights

## 245.002(b). Uniformity of Requirements (cont.):

All permits required for the project are considered to be a single series of permits. Preliminary plans and related subdivision plats, site plans, and all other development permits for land covered by the preliminary plans or subdivision plats are considered collectively to be one series of permits for a project.

# Chapter 245 Highlights

## 245.002. Uniformity of Requirements:

(c) After an application for a project is filed, a regulatory agency may not shorten the duration of any permit required for the project.

# Chapter 245 Highlights

## 245.002. Uniformity of Requirements:

(d) Notwithstanding any provision of this chapter to the contrary, a permit holder may take advantage of recorded subdivision plat notes, recorded restrictive covenants required by a regulatory agency, or a change to the laws, rules, regulations, or ordinances of a regulatory agency that enhance or protect the project, including changes that lengthen the effective life of the permit after the date the application for the permit was made, without forfeiting any rights under this chapter.

# Chapter 245 Highlights

## 245.003. Applicability of Chapter:

This chapter applies only to a project **in progress on** or commenced after September 1, 1997. For purposes of this chapter a project was in progress on September 1, 1997, if: *[detailed criteria]*

# Chapter 245 Highlights

## 245.004. Exemptions:

This chapter does not apply to:

- (1) a permit that is at least two years old, is issued for the construction of a building or structure intended for human occupancy or habitation, and is issued under laws, ordinances, procedures, rules, or regulations adopting only:
  - (A) uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization; or
  - (B) local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons;

# Chapter 245 Highlights

## 245.004. Exemptions:

(2) municipal zoning regulations that do not affect landscaping or tree preservation, open space or park dedication, **property classification**, lot size, lot dimensions, lot coverage, or building size or that do not change development permitted by a restrictive covenant required by a municipality;

# Chapter 245 Highlights

## 245.004. Exemptions:

(9) regulations to prevent **imminent** destruction of property or injury to persons from flooding that are effective only within a flood plain established by a federal flood control program and enacted to prevent the flooding of buildings intended for public occupancy;

# Chapter 245 Highlights

## 245.004. Exemptions:

(10) construction standards for public works located on public lands or easements; or



# Chapter 245 Highlights

## 245.004. Exemptions:

(11) regulations to prevent the **imminent** destruction of property or injury to persons if the regulations do not:

(A) affect lot size, lot dimensions, lot coverage, building size, residential or commercial density, or the timing of a project;  
or

(B) change development permitted by a restrictive covenant required by a municipality.

# Vested Rights Task Force

# Vested Rights Task Force

- Created by Mayor Garza in September, 2004

- Charge:

“The task force should identify and focus on significant legal and practical issues raised by city policies, procedures, and requirements relating to claims of vested rights under state law and the city code. I trust the task force will solicit comments, experiences, and suggestions from all stakeholders in the vested rights process.”

- Meetings held through March, 2005

# Vested Rights Task Force

## ■ Members:

- Susan Wright, Chair, Planning Commission
- Councilman Art Hall
- Councilman Julian Castro
- Councilman Carroll Schubert
- Planning Commissioner Robert Hanley
- Planning Commission Dr. Francine Romero
- Planning Commissioner Mitch Meyers (resigned in March)

# Vested Rights Task Force

- Recommendations under discussion:
  - Require review and approval of VRPs and Consent Agreements by policy makers
  - Use a Project Affidavit to define a project
  - Process for previously issued DRPs and VRPs
  - Addressed Project Revisions and Project Completion
  - Do not require a vested project to comply with new streetscape landscaping requirements

# Issues

# Issues and Policy Questions

- Generous or Restrictive?
  - Chapter 245 establishes restrictions that City must follow, but does not prohibit the City, as a matter of local policy, from expanding vested rights protection
  - Example: Vested rights for property v. vested rights for project

# Issues and Policy Questions

- Balance competing interests:
  - Interest of development community in stability and certainty of San Antonio's land development regulations
  - Interest of the community in having new construction comply with contemporary development regulations, to the extent authorized by Chapter 245 and other applicable state laws



# Issues and Policy Questions

- Improve administrative analysis and review process
- Project definition:
  - “New” v. “Old”
  - Scope & Definition
  - Length
  - Revision v. New Project
- Permitting Process and Vested Rights
- Project: Completed? Continued? Expanded?